



PATENT APPLICATION

IN THE U.S. PATENT AND TRADEMARK OFFICE

November 2, 2004

Applicants: Satoshi MIKAMI et al

For: SKIN CONTACTING ARTICLE

Serial No.: 09/341 328 Group: 1615

Confirmation No.: 4999

Filed: July 6, 1999 Examiner: Channavajjala

International Application No.: PCT/JP98/00080

International Filing Date: January 13, 1998

Atty. Docket No.: Kinoshita Case 209

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION UNDER 37 CFR 1.181

Sir:

This petition is filed pursuant to the provisions of 37 CFR 1.181 and is being filed in order to have the Director reverse the decision of the Examiner refusing the entry of the Supplemental Appeal Brief filed on February 23, 2004.

STATEMENT OF FACTS

On October 9, 2003, an Appellants' Brief on Appeal was filed which inadvertently did not address the final rejection of Claims 12-41 as being unpatentable under 35 USC 103(a) in view of U.S. Patent No. 5 776 497 to Lagrange et al. In the Examiner's Answer, mailed on January 27, 2004, the Examiner stated that "Applicants have not appealed the rejection of claims 12-41 as being unpatentable over US Patent 5,776,497 to Lagrange et al. It therefore appears that applicants have acquiesced to the rejection." On February 23, 2004, Applicants submitted a Supplemental Appellants' Brief on Appeal in which it was pointed out that according to MPEP § 1206 under the heading "Appeal Brief Content", it is stated that, "An Appellant's brief must be responsive to every ground

of rejection stated by the examiner. Where an appeal brief fails to address any ground of rejection, appellant shall be notified by the examiner that he or she must correct the defect by filing a brief (in triplicate) in compliance with 37 CFR 1.192(c)." Since no such notice was given to Appellants, Appellants were exercising their right to file a Supplemental Appeal Brief addressing all of the grounds of rejection by doing so at that point in time.

Appellants did not receive any communication from the Examiner although several calls were made to the Examiner requesting the status of the present application. On September 8, 2004, a copy of a paper dated July 6, 2004 was faxed to Appellants' representative stating that the Supplemental Appeal Brief was refused entry because the issue raised in the Supplemental Brief was not presented in a properly presented Appeal Brief. It is to be noted that this document does not appear in the file history of the present application.

On September 10, 2004, Appellants submitted a request for reconsideration with respect to the Examiner's refusal to enter the Supplemental Appeal Brief and pointed out that according to MPEP § 1206, the Examiner was required to give notice to the Applicant when an Appeal Brief failed to address any ground of rejection and give the Applicant the opportunity to correct the defect by filing a Supplemental Appeal Brief. Appellants also requested that if the Examiner maintains her position that the Supplemental Appeal Brief was not to be entered, she was requested to respond to the statement and MPEP § 1206 which specifically requires that the Examiner send out a notice that the Appeal Brief is defective and give the Applicant the opportunity to cure the defect by filing a Supplemental Appeal Brief.

In response to Appellants' Request for Reconsideration, the Examiner sent out an identical copy of the paper dated July 6, 2004 and did not respond at all to Appellants' Request

for Reconsideration. Copies of all of the above documents are enclosed herewith.

The required fee for this petition is enclosed herewith and the petition is filed in a timely fashion since the Examiner's "response" to the Request for Reconsideration was mailed on October 18, 2004.

Appellants respectfully request that the Examiner be directed to enter the Supplemental Appeal Brief dated February 23, 2004 and prepare a Supplemental Examiner's Answer in response to the Supplemental Appeal Brief.

The Commissioner is hereby authorized to charge any additional fee which may be required by this paper, or to credit any overpayment, to Deposit Account No. 06-1382. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

IN DUPLICATE


Terryence F. Chapman

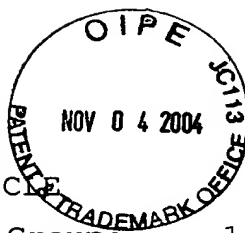
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Brian R. Tumm	Reg. No. 36 328
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Encl: Appeal Brief dated October 9, 2003
Examiner's Answer dated January 27, 2004
Supplemental Appeal Brief dated February 23, 2004
Communication from Examiner faxed on September 8, 2004
Request for Reconsideration dated September 10, 2004
Communication from the Examiner dated October 18, 2004
Check (\$130 - Petition Fee)
Postal Card

110.0703



PATENT APPLICATION

Applicants : Satoshi MIKAMI et al
Title : SKIN CONTACTING ARTICLE
Serial No. : 09/341 328 Group: 1615
Confirmation No.: 4999
Filed : July 6, 1999 Examiner: Channavajjala
International Application No.: PCT/JP98/00080
International Filing Date : January 13, 1998
Atty. Docket No.: Kinoshita Case 209

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

FIRST CLASS MAILING CERTIFICATE

Sir:

I hereby certify that this correspondence is being deposited with the United States Postal Service under 37 CFR 1.8 as first class mail in an envelope addressed to: Commissioner for Patents P.O. Box 1450, Alexandria, VA 22313-1450, on November 2, 2004.

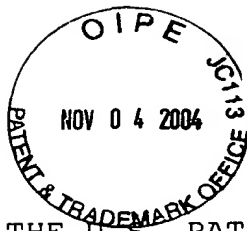

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	Donald J. Wallace	Reg. No. 43 977
	Sidney B. Williams, Jr.	Reg. No. 24 949

Correspondence: Petition Under 37 CFR 1.181
dated November 2, 2004
including enclosures listed thereon

190.05/03



PATENT APPLICATION
IN THE U.S. PATENT AND TRADEMARK OFFICE

September 10, 2004

COPY

Applicants: Satoshi MIKAMI et al
For: SKIN CONTACTING ARTICLE
Serial No.: 09/341 328 Group: 1615
Confirmation No.: 4999
Filed: July 6, 1999 Examiner: Channavajjala
International Application No.: PCT/JP98/00080
International Filing Date: January 13, 1998
Atty. Docket No.: Kinoshita Case 209
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR RECONSIDERATION

Sir:

This Request for Reconsideration is being filed pursuant to the communication from the Patent Office received by facsimile on September 8, 2004 in which the entry of the Supplemental Appeal Brief filed on February 23, 2004 was refused by Supervisory Patent Examiner Thurman Page. As pointed out in the Supplemental Appellants' Brief On Appeal, Applicants contested the Examiner's statement in the Examiner's Answer dated January 27, 2004, that since Applicants did not refer to the rejection of Claims 12-41 as being unpatentable under 35 USC 103 over U.S. Patent No. 5 776 497 to Lagrange et al, Applicants have acquiesced to this rejection. Applicants stated that there was no acquiescence to this rejection and that arguments concerning this reference were omitted only due to an oversight by Applicants' representative.

According to MPEP § 1206, the Examiner is required to give notice to the Applicant when an Appeal Brief fails to address any ground of rejection and give the Applicant the opportunity to correct the defect by filing a Supplemental Appeal Brief. This requirement is mandatory and not optional.

The Examiner did not give Applicants' representative any such notice and, as a result, the refusal of the Examiner and her Supervisor to enter the Supplemental Appeal Brief is clearly erroneous. If the Examiner maintains her position that the Supplemental Appeal Brief is not to be entered, she is respectfully requested to respond to the statement in MPEP S 1206, under the heading "Appeal Brief Content", where it specifically states that the Examiner shall sent out a notice that the Appeal Brief is defective and give the Applicant the opportunity to cure the defect by filing a Supplemental Appeal Brief. Otherwise, the Examiner is required to enter the Supplemental Appeal Brief and send out a Supplemental Examiner's Answer which deals with the Applicants' arguments regarding the rejection of Claims 12-41 over the Lagrange et al reference. Favorable consideration is respectfully solicited.

Respectfully submitted,


Terryence F. Chapman

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/341,328	07/06/1999	SATOSHI MIKAMI	KINOSHITACA	4999

7590 01/27/2004

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MLM DSG
LLC BRT TRC

EXAMINER

CHANNAVAJALA, LAKSHMI SARADA

ART UNIT PAPER NUMBER

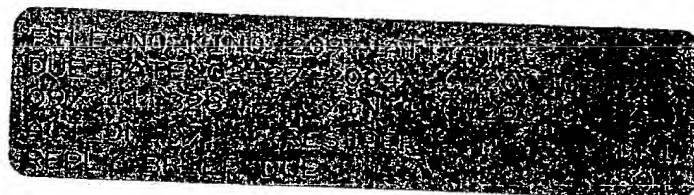
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JAN 30 2004

DATE MAILED: 01/27/2004

RJS SBW TLH
KC CMC PMG
GMS FILE

Please find below and/or attached an Office communication concerning this application or proceeding.





UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 01232004

Application Number: 09/341,328
Filing Date: July 06, 1999
Appellant(s): MIKAMI ET AL.

Terryence Chapman
For Appellant

EXAMINER'S ANSWER

MAILED
JAN 27 2004
GROUP 2900

This is in response to the appeal brief filed 10-14-2003.

Art Unit: 1615

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is substantially correct. The changes are as follows:

In addition to the issue presented by applicants in the brief, claims 12-41 are rejected under 35 USC 103(a) as being unpatentable over US Patent 5,776,497 to Lagrange et al.

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(7) *Grouping of Claims*

The rejection of claims 12-41 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

5,776,497	Lagrange et al.	424/489
5,496,544	Mellul et al.	424/78.03

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 12-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,496,544 to Mellul et al.

Mellul et al. discloses a cosmetic composition for skin consisting of a powder and a silicone resin mixture (abstract). Mellul et al. further teach that face powders and the like usually consist of colored or non-colored powders and a fatty binder, which is then applied to the skin by means of an applicator such as a sponge, powder puff or brush (c 1, l 13-23). Mellul et al. discloses a cosmetic composition with a powder comprising a solid particulate phase mixed with a fatty binder containing a silicone mixture (c 2, l 48-58). Mellul et al. teach an organic powder, which suggests applicant's claim to a natural organic powder. It is the position of the examiner that the term organic can be interpreted to mean natural, being that organic can be defined as something derived from living organisms. Therefore, Mellul et al.'s teachings to any organic

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powder render applicant's claims obvious. Additionally, the examiner refers to column 6, line 9 of the reference, which teaches that starch can be included in the powder composition as filler. Starch is a natural, organic material, and therefore fulfills the requirement for a natural, organic material in the powder composition. Furthermore applicant's claims 24-29 include specific examples of what applicant is referring to as a natural, organic powder. This list includes cellulose and collagen, among others, and is therefore rendered obvious by Mellul et al. 's teaching of starch, as well as the teaching in column 6, line 56, where Mellul et al. teach that collagen can be included in the powder composition.

It is the position of the examiner that Mellul et al 's invention reads on applicant's claims. Applicant is claiming an applicator with a powder adhered to the side which will touch the skin. Mellul et al. teach that powder puffs, applicators, and sponges are well known in the cosmetic art to apply facial powder and the like to the skin. Further, applicant claims that the powder adheres to the applicator through a treatment with a resin mixture. Mellul et al. teach a powder mixed with a silicone resin mixture (weight percents discussed in c 2, 1 61), and teaches that it is applied to the skin in the usual methods (c 7, 1 51-52). Mellul et al. do not teach the specific particle size of the powder. However, it is the position of the examiner that the specific particle size is a limitation that would be routinely determined by one of ordinary skill in the art, through minimal experimentation, as being suitable, absent the presentation of some unusual and/ or unexpected results. The results must be those that accrue from the specific limitations. Therefore, it is the position of the examiner that one of ordinary skill in the art would have been motivated to use a well known applicator (as discussed by Mellul et al.) to apply a cosmetic composition comprising a powder and a silicone resin mixture, as taught by Mellul et al. One of ordinary skill

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in the art would expect an improved cosmetic composition. Therefore, this invention as a whole would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made.

Claims 12-41, and new claim 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5,776,497 to Lagrange et al.

Lagrange et al. disclose a mineral or organic particle based product, wherein the product is a powder, which consists of mineral or organic particles smaller than 200 microns (abstract). Lagrange et al. further teach that the product is to be used in cosmetics (c 1, 1 10, and the reference specifically discusses the formulation's use as a powder to be applied with a powder puff or a brush (c 14, ex. 7). Although Lagrange et al. teach in general that the particles be less than 200 microns, the reference further teaches that the particles, in particular be between 1 and 20 microns (c 4, 1 46). Furthermore, Lagrange et al. teach that substances such as chitin, cellulose, wool, and silk can all be included in the composition (c 5, 1 35-44). Additionally, Lagrange et al. teaches that the makeup compositions of the present invention can also contain thickeners, and anionic and cationic substances (c 9, 1 23-24). It is the position of the examiner that the teachings of Lagrange et al. suggest the limitations of applicant's instant claims. Although Lagrange et al. do not use the language "firmly adhered" to, for the same reasons discussed in the first rejection, this is not considered to patentably distinguish the art from the instant applicant. One of ordinary skill in the art would look to the teachings of Lagrange et al. to formulate a cosmetic composition comprising an applicator, and a powdered substance wherein the powdered substance is firmly adhered to the applicator. Without firm adherence, the

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applicator would not function as desired. Therefore, this invention as a whole would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made.

(11) *Response to Argument*

Applicant's arguments filed October 9, 2002 have been fully considered but they are not persuasive.

MELLUL et al :

Applicants state that the claimed skin contacting article provides a soothing feeling to the skin without causing irritation because of the natural organic material provided in a an impalpable powder form. Applicants argue that Mellul et al discloses a cosmetic composition for skin consisting of anhydrous powder and mainly including a solid particulate phase mixed with a fatty binder containing silicone mixture; and additionally states that the cosmetic composition can be used with a sponge, powder puff or a brush. Applicants argue that nothing in the reference suggests that the powder is firmly adhered to the applicator through a process of coating a treatment comprising the powder onto the base layer and drying the treatment. However, this argument is not persuasive. According to MPEP section 2113 "even though the product by process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production, if the product in the product-by-process claim is the same or obvious from a product of the prior art, the claim is unpatentable even though the prior art was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Therefore, the new limitation, drawn to the process of adhering the powder to the base layer, does not render patentable distinction to the claims. Patentable distinction may only be rendered to composition claims by

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showing that there is a material difference in the actual products. As discussed in the above rejection, it remains the position of the examiner that the cited reference does implicitly teach a powder being adhered to the based layer. Additionally, any differences to be shown between the cited product and the claimed product must be expressed in the claim language.

Applicants argue that in the context of the “ordinary” or “accustomed” meaning of the claimed terms “firmly” (securely or solidly fixed in place) or “adhered” (to hold fast or stick by or as if by gluing, suction, grasping or fusing), the organic powder of the instant article is permanently affixed to a side of the base layer of the article. Applicants also argue that nothing in the instant specification deviates from the above meaning of the phrase “firmly adhered”. Further, applicants argue that there is no basis in the teachings of Mellul et al that suggests that the powder is contained on an applicator prior to being applied to the user. Applicants’ arguments have been considered but not persuasive because as explained above, the patentability of a product does not depend on used for preparing the product and that if the product is obvious the claim is unpatentable even if the prior art uses a different process.

Applicant also argues that the reference does not teach natural, organic impalpable powder. With reference to the examiner’s interpretation that the teaching of any organic powders reads on natural organic impalpable powder, applicants’ argue that the interpretation is against the commonly accepted meaning of natural because the organic powders include “natural” as well as “synthetic”. With reference to the teaching of starch by Mellul, applicants’ argue that there is no disclosure in the reference that starch can be used in the form of an impalpable powder, other than the teaching of starch as filler. Applicants’ arguments have been considered but not found to persuasive because Mellul et al desires that the composition as a whole is in the

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form of a powder and also teaches various fillers of different particle sizes, which make up to about 95% of the composition. Accordingly, employing fillers in the form of powders (which is nothing but particles) so as to achieve a powdered composition, as desired by Mellul et al, would have been obvious for one of an ordinary skill in the art. Further, mere particle size alone does not render patentability to a composition and applicants have not established the criticality of the particle size of the organic powder. Accordingly, manipulating the size of the components of the composition so as to prepare a powdered composition would have been within the scope of a skilled artisan.

For these reasons, the above rejection has been maintained.

LAGRANGE et al :

Applicants have not appealed the rejection of claims 12-41 as being unpatentable over US Patent 5,776,497 to Lagrange et al. It therefore appears that applicants have acquiesced to the rejection.

For the above reasons, it is believed that the rejections should be sustained.

Art Unit: 1615

Respectfully submitted,



Lakshmi S Channavajjala
Examiner
Art Unit 1615
January 23, 2004

THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

Conferees:



Gollamudi S. Kishore, Ph.D.
Primary Examiner
Group 1600

PATENT APPLICATION

IN THE U.S. PATENT AND TRADEMARK OFFICE

October 9, 2003

COPY

Applicants: Satoshi MIKAMI et al

For: SKIN CONTACTING ARTICLE

Serial No.: 09/341 328 Group: 1615

Confirmation No.: 4999

Filed: July 6, 1999 Examiner: Pulliam

International Application No.: PCT/JP98/00080

International Filing Date: January 13, 1998

Atty. Docket No.: Kinoshita Case 209

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANTS' BRIEF ON APPEAL

Sir:

This is an appeal from the decision of the Examiner dated February 24, 2003, finally rejecting Claims 12-41.

REAL PARTY IN INTEREST

Idemitsu Petrochemical Co., Ltd. is the assignee of the present application and the real party in interest.

RELATED APPEALS AND INTERFERENCES

There are no related appeals and interferences to the present application.

STATUS OF CLAIMS

Claims 1-11 and 42 have been canceled. Claims 12-41 are pending and the claims under consideration on appeal.

STATUS OF AMENDMENTS

An Amendment After Final Rejection canceling Claim 42 is being filed along with Appellants' Brief on Appeal.

SUMMARY OF THE INVENTION

Appellants' invention, as defined by independent Claim 12, is directed to a skin contacting article which comprises a base layer and natural organic impalpable powder firmly adhered to a side of the base layer which contacts with the skin. The powder is adhered to the base layer by coating a treatment comprising the powder onto the base layer and drying the treatment thereon (specification page 5, lines 30-37 and specification page 6, lines 1-3).

Claim 13 limits Claim 12 in requiring that the skin contacting article is a sanitary article applied to the skin and comprises a surface material for directly contacting the skin, the surface material including the base layer having the natural organic and palpable powder firmly adhered thereto (specification page 2, lines 17-21).

Claim 14 limits Claim 12 in requiring that the skin contacting article is a make-up tool for applying make-up (specification page 3, line 1).

Claim 15 limits Claim 12 in requiring that the natural organic impalpable powder have an average particle size of less than 30 microns (specification page 3, lines 6 and 7).

Claim 16 limits Claim 12 in requiring that the natural organic impalpable powder have an average particle size of less than 10 microns (specification page 3, lines 11 and 12).

Appellants' invention, as defined by independent Claim 17, is directed to a skin contacting article comprising a base layer and natural organic impalpable powder firmly adhered to a side of the base layer which contacts with the skin by a treatment including the natural organic impalpable powder. The treatment comprises the natural organic impalpable powder and at least one dispersion medium selected from the group consisting of water, an organic solvent, a resin emulsion and a resin aqueous solution, the powder being adhered to the base layer by coating the treatment onto the base layer and drying the treatment thereon (specification page 3, lines 18-22 and specification page 4, lines 7-9).

Claim 18 limits Claim 17 in requiring that the content ratio of the natural organic impalpable powder in the treatment be from 0.5 to 50 wt.% (specification page 4, lines 12 and 13).

Claim 19 limits Claim 17 in requiring that the dispersion medium is either the resin emulsion or the resin aqueous solution and the solid resin content in the treatment is 0.5 to 20 wt.% (specification page 4, line 18-20).

Claim 20 limits Claim 19 in requiring that the natural organic impalpable powder be firmly adhered to the base layer through the resin (specification page 4, lines 21-23).

Appellants' invention, as defined by independent Claim 21, is directed to a skin contacting article comprising a base layer and natural organic impalpable powder firmly adhered to a side of the base layer which contacts with the skin by a treatment including the natural organic impalpable powder having an average particle size of less than 30 microns in either a resin emulsion or a resin aqueous solution for dispersing the natural organic impalpable powder. The content ratio of the natural organic impalpable powder and the treatment is from 0.5 to 50 wt.% and the solid resin content in the treatment is from 0.5 to 20 wt% with the powder being adhered to the base layer by coating the treatment onto the base layer and drying the treatment thereon (specification page 3, line 6 through specification page 4, line 20).

Claim 22 limits Claim 21 in requiring that the skin contacting article is a sanitary article applied to the skin and comprises a surface material for directly contacting the skin with the surface material including the base layer having the natural organic impalpable powder firmly adhered thereto (specification page 2, lines 29-33).

Claim 23 limits Claim 21 in requiring that the skin contacting article be a make-up tool for applying make-up.

Claim 24 limits Claim 12 in requiring that the natural organic impalpable powder is made of a material selected from the group consisting of silk, collagen, cellulose, chitin,

chitosan, wool, hemp, cotton, sponge powder and whey (specification page 2, lines 6 and 7).

Claim 25 limits Claim 24 in requiring that the material be selected from the group consisting of silk, collagen and whey (specification page 2, lines 6 and 7).

Claim 26 limits Claim 24 in requiring that the material be selected from the group consisting of chitin, chitosan and cellulose (specification page 2, lines 6 and 7).

Claim 27 limits Claim 24 in requiring that the material be selected from the group consisting of wool, hemp, cotton and sponge powder (specification page 2, lines 6 and 7).

Claim 28 limits Claim 17 in requiring that the natural organic impalpable powder be made of a material selected from the group consisting of silk, collagen, cellulose, chitin, chitosan, wool, hemp, cotton, sponge powder and whey (specification page 2, lines 6 and 7).

Claim 29 limits Claim 21 in requiring that the natural organic impalpable powder be made of a material selected from the group consisting of silk, collagen, cellulose, chitin, chitosan, wool, hemp, cotton, sponge powder and whey (specification page 2, lines 6 and 7).

Claim 30 limits Claim 17 in requiring that the treatment additionally contain a surface active agent (specification page 3, lines 34 and 35).

Claim 31 limits Claim 30 in requiring that the surface active agent is an ionic surface active agent or a non-ionic surface active agent (specification page 3, lines 35-37).

Claim 32 limits Claim 30 in requiring that the surface active agent is a polyethylene oxide derivative or a sucrose fatty ester (specification page 3, line 35 through specification page 4, line 1).

Claim 33 limits Claim 17 in requiring that the treatment additionally contain a thickening agent (specification page 4, lines 2 and 3).

Claim 34 limits Claim 33 in requiring that the thickening agent is a cellulose derivative or a natural macromolecule thickening agent (specification page 4, lines 3-6).

Claim 35 limits Claim 34 in requiring that the cellulose derivative is methyl cellulose or hydroxyethyl cellulose and the natural macromolecule thickening agent is selected from the group consisting of a gum, a pectin, soda alginate, dextrin, agar and gelatin (specification page 4, lines 2-6).

Claim 36 limits Claim 21 in requiring that the treatment additionally includes a surface active agent (specification page 3, lines 34 and 35).

Claim 37 limits Claim 36 in requiring that the surface active agent is an ionic surface active agent or a non-ionic surface active agent (specification page 3, lines 35-37).

Claim 38 limits Claim 36 in requiring that the surface active agent is a polyoxyethylene derivative or a sucrose fatty ester (specification page 3, line 35 through specification page 4, line 1).

Claim 39 limits Claim 21 in requiring that the treatment additionally contains a thickening agent (specification page 4, lines 2 and 3).

Claim 40 limits Claim 39 in requiring that the thickening agent is a cellulose derivative or a natural macromolecule thickening agent (specification page 4, lines 3-6).

Claim 41 limits Claim 40 in requiring that the cellulose derivative is methyl cellulose or hydroxyethyl cellulose and the natural macromolecule thickening agent is selected from the group consisting of a gum, a pectin, soda alginate, dextrin, agar and gelatin (specification page 4, lines 3-6).

ISSUES

The issue presented for review is whether Claims 12-41 are unpatentable under 35 USC 103(a) in view of U.S. Patent No. 5 496 544 to Mellul et al.

GROUPING OF CLAIMS

The claims all stand or fall together.

ARGUMENT

The presently claimed invention under appeal is directed to, in its broadest form, a skin contacting article made up of a base material having a natural organic impalpable powder firmly adhered to a side of the base layer which contacts with the skin. The powder is adhered to the base layer by coating a treatment comprising the powder onto the base layer and drying the treatment thereon. The natural organic powder is provided in an impalpable form and is firmly adhered to the outer surface of the skin contacting article in order to make the article suitable for use as tissue paper, wet tissue, a mask, gauze, and sanitary articles such as disposable diapers, diaper liners and sanitary napkins. The skin contacting article can also be used as a make-up tool for the application of make-up. Since the natural organic material is provided in an impalpable powder form, it feels soothing on the skin and is less likely to cause skin irritation. It is respectfully submitted that the prior art cited by the Examiner does not disclose the presently claimed invention.

The Mellul et al reference discloses a cosmetic composition for skin consisting of anhydrous powder and mainly including a solid particulate phase mixed with a fatty binder containing a silicone mixture. This reference additionally states that the cosmetic compositions can be applied by an applicator such as a sponge, powder puff or brush. However, nothing in this reference suggests that the powder is firmly adhered to the applicator through a process of coating a treatment comprising the powder onto the base layer and drying the treatment thereon so that the cosmetic composition is firmly adhered to the base layer. Additionally, although this reference discloses that inorganic and organic pigments can be contained in the cosmetic composition, there is no disclosure in this reference of the cosmetic composition containing

natural organic impalpable powder as required by the currently presented claims.

In the final rejection, the Examiner takes the position that Mellul et al reads on the present claims in that it discloses that the powdered cosmetic composition can be applied with powder puffs, applicators and sponges. Additionally, the Examiner has taken the position that Mellul et al's teaching to any organic powder reads on the natural organic impalpable powder required in the present claims. Appellants respectfully traverse these positions of the Examiner.

Numerous court decisions have held that patent claims must be given their "accustomed", "ordinary", or dictionary meaning unless the available interpretation points to another meaning. *Tate Access Floors, Inc. vs. Maxcess Technologies, Inc.*, 222 F3d 958, 965, 55 USPQ 2d 1513, 1517 (Fed Cir 2000) and *Cortland Lime Co., Inc. vs. Orvis Co., Inc.*, 203 F3d 1351, 1356, 53 USPQ 2d 1734, 1737 (Fed Cir 2000). Referring to the 10th edition of Merriam Webster's Collegiate Dictionary, the definition of firmly is "securely or solidly fixed in place" and the definition of adhered is "to hold fast or stick by or as if by gluing, suction, grasping, or fusing". Therefore, giving the "accustomed", "ordinary", or dictionary meaning to the phrase "firmly adhered" means that the natural organic impalpable powder of the present invention is permanently affixed to a side of the base layer of the skin contacting article which contacts with the skin. Moreover, nothing in the present specification gives any suggestion that Appellants intend anything other than the "accustomed", "ordinary" or dictionary meaning of the phrase "firmly adhered". As such, there is no basis for the Examiner to suggest that the powder cosmetic composition of Mellul et al reads on the currently presented claims when it is contained on an applicator prior to being applied to the user.

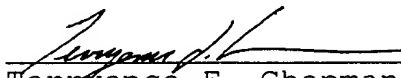
With respect to the Examiner's position that any organic powder is a "natural organic power", Appellants respectfully submit that the Examiner is once again going against the common meaning of a word. One of ordinary skill in the art would consider the word "natural" to be an antonym of the word "synthetic". To say that any organic powder, whether made of a naturally occurring material or a synthetic organic material is a natural organic powder goes against the commonly accepted meaning of the word "natural". Moreover, although Mellul et al discloses that starch can be contained in the powder composition of the filler, there is no disclosure in this reference that the starch is added to the filler as an organic impalpable powder. Therefore, the presently claimed invention is clearly patentably distinguishable from the Mellul et al reference.

CONCLUSION

For the reasons advanced above, it is respectfully submitted that the presently claimed invention clearly is patentably distinguishable over the Mellul et al reference. The only way the Mellul et al reference can be considered to render the presently claimed invention obvious is to go against the common meaning of the terms used in the present claims and accept the convoluted meanings given to these terms by the Examiner. The Examiner's rejection clearly is in error and should be reversed. Favorable consideration is respectfully solicited.

Respectfully submitted,

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Encl: Appendix

110.0703

APPENDIX

12. A skin contacting article used in contact with the skin, said article comprising a base layer and natural organic impalpable powder firmly adhered to a side of the base layer which contacts with the skin, the powder being adhered to the base layer by coating a treatment comprising the powder onto the base layer and drying the treatment thereon.

13. The skin contacting article according to Claim 12, wherein the skin contacting article is a sanitary article applied to the skin and comprises a surface material for directly contacting the skin, the surface material including the base layer having the natural organic impalpable powder firmly adhered thereto.

14. The skin contacting article according to Claim 12, wherein the skin contacting article is a make-up tool for applying make-up.

15. The skin contacting article according to Claim 12, wherein the natural organic impalpable powder has an average particle size of less than 30 μm .

16. The skin contacting article according to Claim 12, wherein the natural organic impalpable powder has an average particle size of less than 10 μm .

17. A skin contacting article used in contact with the skin, said article comprising a base layer and natural organic impalpable powder firmly adhered to a side of the base layer which contacts with the skin by a treatment including the natural organic impalpable powder, the treatment comprising the natural organic impalpable powder and at least one dispersion medium selected from the group consisting of water, an organic solvent, a resin emulsion and a resin aqueous

solution, the powder being adhered to the base layer by coating the treatment onto the base layer and drying the treatment thereon.

18. The skin contacting article according to Claim 17, wherein the content ratio of the natural organic impalpable powder in the treatment is from 0.5 to 50 wt.%.

19. The skin contacting article according to Claim 17, wherein the dispersion medium is either the resin emulsion or the resin aqueous solution and the solid resin content in the treatment is 0.5 to 20 wt.%.

20. The skin contacting article according to Claim 19, wherein the natural organic impalpable powder is firmly adhered to the base layer through the resin.

21. A skin contacting article used in contact with the skin, said article comprising a base layer and natural organic impalpable powder firmly adhered to a side of the base layer which contacts with the skin by a treatment including the natural organic impalpable powder having an average particle size of less than 30 μm and either a resin emulsion or a resin aqueous solution for dispersing the natural organic impalpable powder, the content ratio of the natural organic impalpable powder in the treatment being from 0.5 to 50 wt.% and the solid resin content in the treatment being from 0.5 to 20 wt.%, the powder being adhered to the base layer by coating the treatment onto the base layer and drying the treatment thereon.

22. The skin contacting article according to Claim 21, wherein the skin contacting article is a sanitary article applied to the skin and comprises a surface material for directly contacting the skin, the surface material including

the base layer having the natural organic impalpable powder firmly adhered thereto.

23. The skin contacting article according to Claim 21, wherein the skin contacting article is a make-up tool for applying make-up.

24. The skin contacting article according to Claim 12, wherein the natural organic impalpable powder is made of a material selected from the group consisting of silk, collagen, cellulose, chitin, chitosan, wool, hemp, cotton, sponge powder and whey.

25. The skin contacting article according to Claim 24, wherein the material is selected from the group consisting of silk, collagen and whey.

26. The skin contacting article according to Claim 24, wherein the material is selected from the group consisting of chitin, chitosan and cellulose.

27. The skin contacting article according to Claim 24, wherein the material is selected from the group consisting of wool, hemp, cotton and sponge powder.

28. The skin contacting article according to Claim 17, wherein the natural organic impalpable powder is made of a material selected from the group consisting of silk, collagen, cellulose, chitin, chitosan, wool, hemp, cotton, sponge powder and whey.

29. The skin contacting article according to Claim 21, wherein the natural organic impalpable powder is made of a material selected from the group consisting of silk, collagen,

cellulose, chitin, chitosan, wool, hemp, cotton, sponge powder and whey.

30. The skin contacting article according to Claim 17, wherein the treatment additionally contains a surface active agent.

31. The skin contacting article according to Claim 30, wherein the surface active agent is an ionic surface active agent or a non-ionic surface active agent.

32. The skin contacting article according to Claim 30, wherein the surface active agent is a polyethylene oxide derivative or a sucrose fatty ester.

33. The skin contacting article according to Claim 17, wherein the treatment additionally contains a thickening agent.

34. The skin contacting article according to Claim 33, wherein the thickening agent is a cellulose derivative or a natural macromolecule thickening agent.

35. The skin contacting article according to Claim 34, wherein the cellulose derivative is methyl cellulose or hydroxyethyl cellulose and the natural macromolecule thickening agent is selected from the group consisting of a gum, a pectin, soda alginate, dextrin, agar and gelatin.

36. The skin contacting article according to Claim 21, wherein the treatment additionally includes a surface active agent.

37. The skin contacting article according to Claim 36, wherein the surface active agent is an ionic surface active agent or a non-ionic surface active agent.

38. The skin contacting article according to Claim 36, wherein the surface active agent is a polyoxyethylene derivative or a sucrose fatty ester.

39. The skin contacting article according to Claim 21, wherein the treatment additionally includes a thickening agent.

40. The skin contacting article according to Claim 39, wherein the thickening agent is a cellulose derivative or a natural macromolecule thickening agent.

41. The skin contacting article according to Claim 40, wherein the cellulose derivative is methyl cellulose or hydroxyethyl cellulose and the natural macromolecule thickening agent is selected from the group consisting of a gum, a pectin, soda alginate, dextrin, agar and gelatin.



PATENT APPLICATION

IN THE U.S. PATENT AND TRADEMARK OFFICE

February 23, 2004

COPY

Applicants: Satoshi MIKAMI et al

For: SKIN CONTACTING ARTICLE

Serial No.: 09/341 328 Group: 1615

Confirmation No.: 4999

Filed: July 6, 1999 Examiner: Channavajjala

International Application No.: PCT/JP98/00080

International Filing Date: January 13, 1998

Atty. Docket No.: Kinoshita Case 209

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

SUPPLEMENTAL APPELLANTS' BRIEF ON APPEAL

Sir:

This is an appeal from the decision of the Examiner dated February 24, 2003, finally rejecting Claims 12-41.

In the Examiner's Answer dated January 27, 2004, the Examiner states that since Applicants have not appealed the rejection of Claims 12-41 as being unpatentable over U.S. Patent 5 776 497 to Lagrange et al, it appears that Applicants have acquiesced to this rejection. Appellants have not acquiesced to this rejection and arguments concerning Lagrange et al were omitted only due to an oversight by Appellants' representative.

According to MPEP § 1206 under the heading "APPEAL BRIEF CONTENT" it is stated that "An appellant's brief must be responsive to every ground of rejection stated by the examiner. Where an appeal brief fails to address any ground of rejection, appellant shall be notified by the examiner that he or she must correct the defect by filing a brief (in triplicate) in compliance with 37 CFR 1.192(c)." A copy of this section is enclosed herewith. In the present situation, no such notice was given to Appellant. Since Appellant has

the right to file a Supplemental Appeal Brief correcting the defect, Appellants are doing so at the present time.

REAL PARTY IN INTEREST

Idemitsu Petrochemical Co., Ltd. is the assignee of the present application and the real party in interest.

RELATED APPEALS AND INTERFERENCES

There are no related appeals and interferences to the present application.

STATUS OF CLAIMS

Claims 1-11 and 42 have been canceled. Claims 12-41 are pending and the claims under consideration on appeal.

STATUS OF AMENDMENTS

An Amendment After Final Rejection canceling Claim 42 was filed along with Appellants' Brief on Appeal.

SUMMARY OF THE INVENTION

Appellants' invention, as defined by independent Claim 12, is directed to a skin contacting article which comprises a base layer and natural organic impalpable powder firmly adhered to a side of the base layer which contacts with the skin. The powder is adhered to the base layer by coating a treatment comprising the powder onto the base layer and drying the treatment thereon (specification page 5, lines 30-37 and specification page 6, lines 1-3).

Claim 13 limits Claim 12 in requiring that the skin contacting article is a sanitary article applied to the skin and comprises a surface material for directly contacting the skin, the surface material including the base layer having the natural organic and palpable powder firmly adhered thereto (specification page 2, lines 17-21).

Claim 14 limits Claim 12 in requiring that the skin contacting article is a make-up tool for applying make-up (specification page 3, line 1).

Claim 15 limits Claim 12 in requiring that the natural organic impalpable powder have an average particle size of less than 30 microns (specification page 3, lines 6 and 7).

Claim 16 limits Claim 12 in requiring that the natural organic impalpable powder have an average particle size of less than 10 microns (specification page 3, lines 11 and 12).

Appellants' invention, as defined by independent Claim 17, is directed to a skin contacting article comprising a base layer and natural organic impalpable powder firmly adhered to a side of the base layer which contacts with the skin by a treatment including the natural organic impalpable powder. The treatment comprises the natural organic impalpable powder and at least one dispersion medium selected from the group consisting of water, an organic solvent, a resin emulsion and a resin aqueous solution, the powder being adhered to the base layer by coating the treatment onto the base layer and drying the treatment thereon (specification page 3, lines 18-22 and specification page 4, lines 7-9).

Claim 18 limits Claim 17 in requiring that the content ratio of the natural organic impalpable powder in the treatment be from 0.5 to 50 wt.% (specification page 4, lines 12 and 13).

Claim 19 limits Claim 17 in requiring that the dispersion medium is either the resin emulsion or the resin aqueous solution and the solid resin content in the treatment is 0.5 to 20 wt.% (specification page 4, line 18-20).

Claim 20 limits Claim 19 in requiring that the natural organic impalpable powder be firmly adhered to the base layer through the resin (specification page 4, lines 21-23).

Appellants' invention, as defined by independent Claim 21, is directed to a skin contacting article comprising a base layer and natural organic impalpable powder firmly

adhered to a side of the base layer which contacts with the skin by a treatment including the natural organic impalpable powder having an average particle size of less than 30 microns in either a resin emulsion or a resin aqueous solution for dispersing the natural organic impalpable powder. The content ratio of the natural organic impalpable powder and the treatment is from 0.5 to 50 wt.% and the solid resin content in the treatment is from 0.5 to 20 wt% with the powder being adhered to the base layer by coating the treatment onto the base layer and drying the treatment thereon (specification page 3, line 6 through specification page 4, line 20).

Claim 22 limits Claim 21 in requiring that the skin contacting article is a sanitary article applied to the skin and comprises a surface material for directly contacting the skin with the surface material including the base layer having the natural organic impalpable powder firmly adhered thereto (specification page 2, lines 29-33).

Claim 23 limits Claim 21 in requiring that the skin contacting article be a make-up tool for applying make-up.

Claim 24 limits Claim 12 in requiring that the natural organic impalpable powder is made of a material selected from the group consisting of silk, collagen, cellulose, chitin, chitosan, wool, hemp, cotton, sponge powder and whey (specification page 2, lines 6 and 7).

Claim 25 limits Claim 24 in requiring that the material be selected from the group consisting of silk, collagen and whey (specification page 2, lines 6 and 7).

Claim 26 limits Claim 24 in requiring that the material be selected from the group consisting of chitin, chitosan and cellulose (specification page 2, lines 6 and 7).

Claim 27 limits Claim 24 in requiring that the material be selected from the group consisting of wool, hemp, cotton and sponge powder (specification page 2, lines 6 and 7).

Claim 28 limits Claim 17 in requiring that the natural organic impalpable powder be made of a material selected from

the group consisting of silk, collagen, cellulose, chitin, chitosan, wool, hemp, cotton, sponge powder and whey (specification page 2, lines 6 and 7).

Claim 29 limits Claim 21 in requiring that the natural organic impalpable powder be made of a material selected from the group consisting of silk, collagen, cellulose, chitin, chitosan, wool, hemp, cotton, sponge powder and whey (specification page 2, lines 6 and 7).

Claim 30 limits Claim 17 in requiring that the treatment additionally contain a surface active agent (specification page 3, lines 34 and 35).

Claim 31 limits Claim 30 in requiring that the surface active agent is an ionic surface active agent or a non-ionic surface active agent (specification page 3, lines 35-37).

Claim 32 limits Claim 30 in requiring that the surface active agent is a polyethylene oxide derivative or a sucrose fatty ester (specification page 3, line 35 through specification page 4, line 1).

Claim 33 limits Claim 17 in requiring that the treatment additionally contain a thickening agent (specification page 4, lines 2 and 3).

Claim 34 limits Claim 33 in requiring that the thickening agent is a cellulose derivative or a natural macromolecule thickening agent (specification page 4, lines 3-6).

Claim 35 limits Claim 34 in requiring that the cellulose derivative is methyl cellulose or hydroxyethyl cellulose and the natural macromolecule thickening agent is selected from the group consisting of a gum, a pectin, soda alginate, dextrin, agar and gelatin (specification page 4, lines 2-6).

Claim 36 limits Claim 21 in requiring that the treatment additionally includes a surface active agent (specification page 3, lines 34 and 35).

Claim 37 limits Claim 36 in requiring that the surface active agent is an ionic surface active agent or a non-ionic surface active agent (specification page 3, lines 35-37).

Claim 38 limits Claim 36 in requiring that the surface active agent is a polyoxyethylene derivative or a sucrose fatty ester (specification page 3, line 35 through specification page 4, line 1).

Claim 39 limits Claim 21 in requiring that the treatment additionally contains a thickening agent (specification page 4, lines 2 and 3).

Claim 40 limits Claim 39 in requiring that the thickening agent is a cellulose derivative or a natural macromolecule thickening agent (specification page 4, lines 3-6).

Claim 41 limits Claim 40 in requiring that the cellulose derivative is methyl cellulose or hydroxyethyl cellulose and the natural macromolecule thickening agent is selected from the group consisting of a gum, a pectin, soda alginate, dextrin, agar and gelatin (specification page 4, lines 3-6).

ISSUES

The first issue presented for review is whether Claims 12-41 are unpatentable under 35 USC 103(a) in view of U.S. Patent No. 5 496 544 to Mellul et al.

The second issue presented for review is whether Claims 12-41 are unpatentable under 35 USC 103(a) in view of U.S. Patent No. 5 776 497 to Lagrange et al.

GROUPING OF CLAIMS

The claims all stand or fall together.

ARGUMENT

The presently claimed invention under appeal is directed to, in its broadest form, a skin contacting article made up of a base material having a natural organic impalpable powder firmly adhered to a side of the base layer which contacts with the skin. The powder is adhered to the base layer by coating a treatment comprising the powder onto the base layer and drying the treatment thereon. The natural organic powder is

provided in an impalpable form and is firmly adhered to the outer surface of the skin contacting article in order to make the article suitable for use as tissue paper, wet tissue, a mask, gauze, and sanitary articles such as disposable diapers, diaper liners and sanitary napkins. The skin contacting article can also be used as a make-up tool for the application of make-up. Since the natural organic material is provided in an impalpable powder form, it feels soothing on the skin and is less likely to cause skin irritation. It is respectfully submitted that the prior art cited by the Examiner does not disclose the presently claimed invention.

The Mellul et al reference discloses a cosmetic composition for skin consisting of anhydrous powder and mainly including a solid particulate phase mixed with a fatty binder containing a silicone mixture. This reference additionally states that the cosmetic compositions can be applied by an applicator such as a sponge, powder puff or brush. However, nothing in this reference suggests that the powder is firmly adhered to the applicator through a process of coating a treatment comprising the powder onto the base layer and drying the treatment thereon so that the cosmetic composition is firmly adhered to the base layer. Additionally, although this reference discloses that inorganic and organic pigments can be contained in the cosmetic composition, there is no disclosure in this reference of the cosmetic composition containing natural organic impalpable powder as required by the currently presented claims.

In the final rejection, the Examiner takes the position that Mellul et al reads on the present claims in that it discloses that the powdered cosmetic composition can be applied with powder puffs, applicators and sponges. Additionally, the Examiner has taken the position that Mellul et al's teaching to any organic powder reads on the natural organic impalpable powder required in the present claims.

Appellants respectfully traverse these positions of the Examiner.

Numerous court decisions have held that patent claims must be given their "accustomed", "ordinary", or dictionary meaning unless the available interpretation points to another meaning. Tate Access Floors, Inc. vs. Maxcess Technologies, Inc., 222 F3d 958, 965, 55 USPQ 2d 1513, 1517 (Fed Cir 2000) and Cortland Lime Co., Inc. vs. Orvis Co., Inc., 203 F3d 1351, 1356, 53 USPQ 2d 1734, 1737 (Fed Cir 2000). Referring to the 10th edition of Merriam Webster's Collegiate Dictionary, the definition of firmly is "securely or solidly fixed in place" and the definition of adhered is "to hold fast or stick by or as if by gluing, suction, grasping, or fusing". Therefore, giving the "accustomed", "ordinary", or dictionary meaning to the phrase "firmly adhered" means that the natural organic impalpable powder of the present invention is permanently affixed to a side of the base layer of the skin contacting article which contacts with the skin. Moreover, nothing in the present specification gives any suggestion that Appellants intend anything other than the "accustomed", "ordinary" or dictionary meaning of the phrase "firmly adhered". As such, there is no basis for the Examiner to suggest that the powder cosmetic composition of Mellul et al reads on the currently presented claims when it is contained on an applicator prior to being applied to the user.

With respect to the Examiner's position that any organic powder is a "natural organic power", Appellants respectfully submit that the Examiner is once again going against the common meaning of a word. One of ordinary skill in the art would consider the word "natural" to be an antonym of the word "synthetic". To say that any organic powder, whether made of a naturally occurring material or a synthetic organic material is a natural organic powder goes against the commonly accepted meaning of the word "natural". Moreover, although Mellul et al discloses that starch can be contained in the powder

composition of the filler, there is no disclosure in this reference that the starch is added to the filler as an organic impalpable powder. Therefore, the presently claimed invention is clearly patentably distinguishable from the Mellul et al reference.

The Lagrange et al reference discloses a mineral or organic particle-based product comprising an indoline product, a method for preparing same, and the use thereof in cosmetics. The product is powder consisting of mineral or organic particles smaller than 200 microns and comprises, and/or on the particles, an indoline product obtained by oxidative polymerization using at least one indoline. These powders are disclosed as being a cosmetic composition which are used for making up the skin and the exoskeleton and for protecting the human epidermis against UV radiation. Although this reference discloses that the inventive powder can be applied with a powder puff or brush, there is no disclosure in this reference regarding the powder being firmly adhered to a side of a base layer. As pointed out above with respect to the arguments directed to the Mellul et al reference, nothing in Lagrange et al suggests that the powder disclosed there is firmly adhered to a base layer. In fact, such an interpretation of the disclosure of Lagrange et al would in fact destroy the object of this reference since the powder disclosed there is a cosmetic preparation which is to be applied to the skin and/or exoskeleton. Therefore, for the reasons advanced above, it is respectfully submitted that the Lagrange et al reference does not disclose the presently claimed invention.

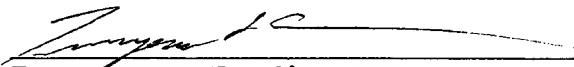
CONCLUSION

For the reasons advanced above, it is respectfully submitted that the presently claimed invention clearly is patentably distinguishable over the Mellul et al and Lagrange et al references. The only way the Mellul et al and Lagrange et al references can be considered to render the presently

claimed invention obvious is to go against the common meaning of the terms used in the present claims and accept the convoluted meaning given to these terms by the Examiner. The Examiner's rejections clearly are in error and should be reversed. Favorable consideration is respectfully solicited.

Respectfully submitted,

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Brian R. Tumm	Reg. No. 36 328
Steven R. Thiel	Reg. No. 53 685
Sidney B. Williams, Jr.	Reg. No. 24 949

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APPENDIX

12. A skin contacting article used in contact with the skin, said article comprising a base layer and natural organic impalpable powder firmly adhered to a side of the base layer which contacts with the skin, the powder being adhered to the base layer by coating a treatment comprising the powder onto the base layer and drying the treatment thereon.

13. The skin contacting article according to Claim 12, wherein the skin contacting article is a sanitary article applied to the skin and comprises a surface material for directly contacting the skin, the surface material including the base layer having the natural organic impalpable powder firmly adhered thereto.

14. The skin contacting article according to Claim 12, wherein the skin contacting article is a make-up tool for applying make-up.

15. The skin contacting article according to Claim 12, wherein the natural organic impalpable powder has an average particle size of less than 30 μm .

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17. A skin contacting article used in contact with the skin, said article comprising a base layer and natural organic impalpable powder firmly adhered to a side of the base layer which contacts with the skin by a treatment including the natural organic impalpable powder, the treatment comprising the natural organic impalpable powder and at least one dispersion medium selected from the group consisting of water, an organic solvent, a resin emulsion and a resin aqueous

solution, the powder being adhered to the base layer by coating the treatment onto the base layer and drying the treatment thereon.

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19. The skin contacting article according to Claim 17, wherein the dispersion medium is either the resin emulsion or the resin aqueous solution and the solid resin content in the treatment is 0.5 to 20 wt.%.

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26. The skin contacting article according to Claim 24, wherein the material is selected from the group consisting of chitin, chitosan and cellulose.

27. The skin contacting article according to Claim 24, wherein the material is selected from the group consisting of wool, hemp, cotton and sponge powder.

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31. The skin contacting article according to Claim 30, wherein the surface active agent is an ionic surface active agent or a non-ionic surface active agent.

32. The skin contacting article according to Claim 30, wherein the surface active agent is a polyethylene oxide derivative or a sucrose fatty ester.

33. The skin contacting article according to Claim 17, wherein the treatment additionally contains a thickening agent.

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35. The skin contacting article according to Claim 34, wherein the cellulose derivative is methyl cellulose or hydroxyethyl cellulose and the natural macromolecule thickening agent is selected from the group consisting of a gum, a pectin, soda alginate, dextrin, agar and gelatin.

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39. The skin contacting article according to Claim 21, wherein the treatment additionally includes a thickening agent.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/341,328	07/06/1999	SATOSHI MIKAMI	KINOSHITACA 209	4999

7590 10/18/2004

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EXAMINER

CHANNAVAJJALA, LAKSHMI SARADA

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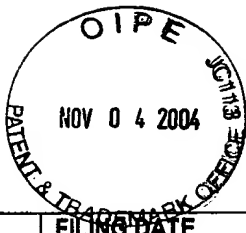
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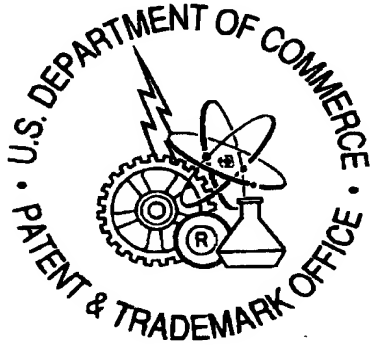
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A Supplemental Appeal Brief has been filed by appellants on 2-26-04. The Appeal Brief (dated 10-14-03) presented only one issue before the board i.e., whether the rejection of claims 12-41 are unpatentable under 35 USC 103(a) as being obvious over US patent No. 5,496,544 and hence is proper. However, the supplemental brief is refused under 37 CFR 1.195 because the issue raised in the supplemental brief has not been presented in a properly presented appeal brief.


THURMAN K. PAGE
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TECHNOLOGY CENTER 1600



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APPLICATION NO/ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
09/341,328	07/06/1971	Mikami et al.	KINOSHITACA
			EXAMINER
			L. Channavajjala
		ART UNIT	PAPER
		1615	07062004

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